## 1. Do you agree with the guidance principles set out above?

I think the guidance is an improvement on the current situation, where contracts with guaranteed mid contract prices rises are essentially advertised as fixed price contract.

Nonetheless, I feel the proposed guidance is too weak in allowing misleading advertising, especially around tiered pricing. The examples in the appendix give undue prominence to the initial price, and don't give concrete enough examples of how the initial price will likely change in practice. I will elaborate on this further in my subsequent answers.

## 2. Do you agree with taking the same approach to ads for both tiered and variable contracts, in terms of the level of prominence expected for information about mid-contract price increases?

I think it is far more important for tiered pricing to be more explicit. I am not arguing for the proposed guidance for variable contracts to be weakened, but for the guidance to be made stronger, at least for tiered contracts.

As a consumer, I the things most important to me about a broadband contract are the speeds, the price, and the contract term. Or rather, the speed, and the effective average price over the contract term. I am less concerned about variable contracts where I have the right to switch and terminate the contract, than I am about unclear and enforced mid-contract price rises.

## 3. Do you have any comments on the use of terms used to describe rates of inflation such as CPI and RPI, and the level of understanding consumers have of these terms (including when they are referred to using an initialism only)?

I think it is best for understandability, both for the terms to be spelt out, and for it to be explicitly stated it is a measures of inflation.

Moreover, RPI is officially a deprecated measure of inflation. RPI is no longer a "national statistic", due to its statistical flaws, and RPI is not recommended by statistical bodies, except for existing legacy uses. CPI or CPIH is much more widely quoted, for example in the news or by the Bank of England. As such it would be good for adverts to be clear, if using RPI, that the Retail Price Index tends to be e.g. 2 percentage points higher than the much more widely used Consumer Price Index measure of inflation.

## 4. Do you agree with the mitigating factors listed as having the potential to cause an advertiser to take additional action in order to ensure material information relating to in-contract price increases is sufficiently clear?

These factors, which require extra clarification, seem fairly sensible.

## 5. Do you agree that in instances where multiple offers/products appear on one page (for example, on a telecoms provider's own website), it may be sufficient for prices to link or refer to a suitably-prominent single piece of information about mid-contract price increases, rather than including this information within each individual product listing?

No, this information is highly relevant, so doing this would unreasonably minimise information about the price rises. If advertisers are pressed for space, they have the alternative of increasing their initial prices, but then keeping them constant.

Moreover, as I will explain in question 6, a generic page doesn't contain concrete enough information about a tiered price rise.

Finally, I disapprove of an antipattern I have seen: A broadband supplier, on a product listing on their website, gave the URL of their generic price rise information page, but did not make the URL a clickable link.

## 6. Do you have any other comments or suggestions in relation to the proposals

As I have mentioned previously, I don't think the examples in the appendix convey, concretely enough, information on tiered contracts.

As a consumer, price is one of the most important facts about a contract. Not so much the introductory price (although that may grab my attention), but the effective average monthly price and/or the post-introductory period price.

There are several aspects to my reasoning:

(a) In the consultation document, you say "In principle, tiered mid-contract price increases that consumers are contractually obliged to pay are analogous to other types of compulsory charges addressed in CAP Advice online, such as delivery charges and booking costs."

I strongly agree with this logic. But this raises the question, why is this new proposed guidance weak, compared to e.g. the ASA position on not including mandatory line rental in headline pricing.

Suppose inflation for two years is 10%. This no longer seems completely remote, given some credible estimates of CPI are that it will peak at 14%. Well, 10+3.8 = 13.8%. And 1.138 * 1.138 = 1.295. In other words, a typical tiered contract might increase price in-contract by 30%. This is hugely material. Recall that asterisks can be used to clarify, but not contradict. It wouldn't be permissible to advertise a fixed price £30 contract as "£21*".

Yes, CPI in April next year isn't yet known for certain, but we know what CPI is at the moment, and there are ranges of credible estimates for CPI in April next year. There is no excuse for not using e.g. the highest of these reasonable estimates.

I also note that mortgage contracts are often fixed then variable (the difference being the contract can be broken after the fixed portion ends!) and yet the variable portion is described in adverts using concrete numbers and the words “currently”. The fact there is a variable portion isn’t used an excuse to avoid conveying the rough impact.

(b) In the consultation document, you say “The initial price period preceding the obligatory rise can be seen as functionally the same as an introductory discount period”.

There is a degree of truth to this, but it isn’t fully accurate. In particular, there might be two annual price rises, in an 18 or 24 month contract. As such, more prominence and concrete information is required compared to a proper introductory discount period.

(c) In the consultation document, you mention Ofcom’s recently revised General Conditions of Entitlement. Section C1 was revised on 2022-06-17.

However, I don’t think you have sufficiently considered this when forming your own guidance.

Ofcom’s Section C1 sets out how the Contract Information document should present key facts to the customer, including for tiered pricing. Ofcom considers it necessary for concrete examples to be given of the effect of plausible concrete CPI values, on the monthly price.

Please see 1.20 to 1.24 of Section C1, if it is not clear what I mean by concrete examples.

How can *not* providing these concrete examples be considered misleading by Ofcom at the pre contract stage, yet leaving out these examples is not considered misleading by the ASA in advertising?

The answer is *of course* this information is highly relevant, and not including concrete examples gives undue prominence to a misleading headline price. ASA guidance should be strengthened, in line with Ofcom Section C1.

In fact I think ASA guidance could even be stronger, seeing as current CPI figures are much higher than CPI back in April this year.

Advertisers should be mindful of whether they increase the advertised cost (to new customers), by the same amount and at the same time, as when they implement mid contract price rises for existing customers. If they do so, the price rise is more likely to be a genuine change in the price of the product. If they do not, there is a higher chance the mid contract price has the effect of misleading the consumer about the overall cost of the service, given the usual cost for new customers hasn't changed.

I ask the ASA to further consider Section 6(4)(d) of The Consumer Protection from Unfair Trading Regulations 2008. Section 6 protects the consumer from misleading omissions. Omitting, hiding, or presenting material information unclearly can be an unfair commercial practice. Section 6(4)(d) specifically says the following is material information: the “(i) the price [...]” or “(ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated”.

I want to stress the second clause is qualified by "the nature of the product", not "the nature of the [possibly artificial] charging scheme". The product is a consumer broadband package. It is readily possible to have consumer broadband packages where the concrete prices are shown in the advertising, as demonstrated by the existence of many such packages. Advertisers choosing an artificial charging structure, for example basing a price increase on a random coin toss, doesn't change the nature of the product itself. Deliberately choosing an obscure pricing scheme doesn't absolve them of the responsibility to clearly present price information, because it doesn't change the "nature of the product" itself. So again, advertisers should provide clear concrete examples of likely mid contract price rises, and make this information sufficiently large to not mislead. It is not good enough to not present any concrete numbers on the basis the future is not fully certain, when as I said, the nature of the product itself is unchanged by advertisers wishing to adopt an uncertain pricing structure.